



THE ACCELERATION OF ELECTRONIC NOTARIZATIONS

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E-signature and Remote Notarization Issues in Louisiana

- Statutory framework authorizing e-signatures (Louisiana Uniform Electronic Transactions Act (UETA), La. R.S. 9:2601, *et seq.*; passed in 2001) and Remote Online Notarization Act (La.R.S. 35:621, *et seq.*; eff. February 1, 2022)
- Exclusions from the Louisiana UETA
- Electronic Notarization and requirements for authentic acts
- Remote Online Notarization (“RON”) – Update on Legislation and guidance from Secretary of State
- E-filing and the use of electronic signatures

Statutory Background for Use of E-signatures and Remote Notarizations

- Louisiana Uniform Electronic Transactions Act (UETA), La. Rev. Stat. Ann. § 9:2601, et seq.; passed in 2001.
- Based on the Uniform Electronic Transactions Act (1999), National Conference of Commissioners on Uniform State Laws
- Adopted by 47 states
- Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq (the “E-Sign Act”)

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2607. Legal recognition of electronic records, electronic signatures, and electronic contracts

- A. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- B. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- C. If a law requires a record to be in writing, an electronic record satisfies the law.
- D. If a law requires a signature, an electronic signature satisfies the law.

Comments:

(a) This Section sets forth the fundamental premise of this Chapter: namely, that the medium in which a record, signature, or agreement is created, presented or retained does not affect its legal significance. Subsections A and B of this Section are designed to eliminate the single element of medium as a reason to deny effect or enforceability to a record, signature, or agreement. The fact that the information is set forth in an electronic, as opposed to paper, record is irrelevant.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2611 Notarization and acknowledgment

- “If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.”
- Comments: “This Section does not provide any guidance for how electronic notarization can be achieved.”

Louisiana Civil Code art. 1833 (Authentic act)

“An authentic act is a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed.”

LOUISIANA REMOTE ONLINE NOTARIZATION ACT

Remote Online Notarization

Remote Online Notarization Legislation

- House Bill No. 122, Rep. Miller – Signed by the Governor; becomes Act 131, effective date: 06/09/2020.
- HB 122 – Enacts La.R.S. 35:701 and 702 - “The action of the governor of this state in issuing Section 6 of Proclamation Number 37 JBE 2020 and Part C of Section 5 of Proclamation Number 41 JBE 2020 is hereby approved, ratified, and confirmed subject to the provisions of this Part.”
- Retroactive to March 11, 2020; covers period through May 1, 2020
- Does not apply to any document listed in the exclusions – “shall not apply to any testament, trust instrument, donation inter vivos, matrimonial agreement, act modifying, waiving, or extinguishing an obligation of final spousal support, or any amendments to such acts, or authentic acts.”
- Retroactive application applies to witnesses (although excluded from 41 JBE 2020 on April 2, 2020)

LOUISIANA REMOTE ONLINE NOTARIZATION ACT

Remote Online Notarization

Legislation (House Bill No. 274, Rep. Garofalo, Signed by the Governor; becomes Act No. 254, 2020 Regular Session)

- Authorizes Remote Notarization (La.R.S. 35:621, *et seq.*)
- B. The following instruments shall not be executed by remote online notarization:
 - (1) Testaments or codicils thereto.
 - (2) Trust instruments or acknowledgments thereof.
 - (3) Donations inter vivos.
 - (4) Matrimonial agreements or acknowledgments thereof.
 - (5) Acts modifying, waiving, or extinguishing an obligation of final spousal support or acknowledgments thereof.
- Establishes stakeholder committee to work with Secretary of State
- Discusses the procedure for performing the online notarization, including location of parties
- Record maintenance – 10 years for electronic document and audio/visual recording
- SB 472 – Retroactive to March 11, 2020; would take effect Feb. 1, 2022.
- HB 274 – Effective date Feb.1, 2022, depending on SECURE Act

LOUISIANA REMOTE ONLINE NOTARIZATION ACT

Remote Online Notarization

Proposed Federal legislation - Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020

- Senators Mark Warner and Kevin Cramer
- “To authorize and establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce, to require any Federal court located in a State to recognize notarizations performed by a notary public commissioned by another State when the notarization occurs in or affects interstate commerce, and to require any State to recognize notarizations performed by a notary public commissioned by another State when the notarization occurs in or affects interstate commerce or when the notarization was performed under or relates to a public act, record, or judicial proceeding of the State in which the notary public was commissioned.”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Electronic Wills

- **Florida** - Fla. Stat. Ann. § 732.523 (Self-proof of electronic will)
- **Arizona** - Ariz. Rev. Stat. Ann. § 14-2518 (Electronic will; requirements; interpretation)
- **Nevada** - Nev. Rev. Stat. Ann. § 133.085 (Electronic will)
- **Indiana** - Ind. Code Ann. § 29-1-21-1 (Chapter 21. Electronic Wills) “The purpose of this chapter is to provide rules for the valid execution, attestation, self-proving, and probate of wills that are prepared and signed electronically.”
- Most, if not all, still have a physical presence requirement, but allow electronic signatures by testator, notary, and witnesses

Uniform Electronic Wills Act (drafted by the National Conference of Commissioners on Uniform State Laws, July 2019)

LOUISIANA UNIFORM ELECTRONICTRANSACTIONS ACT (UETA)

§ 2603 Scope – does NOT apply to “the creation and execution of wills, codicils, or testamentary trusts”;

- Does not apply to the “extent [a transaction] it is governed by the provisions of Title 10 of the Louisiana Revised Statutes” – the comments indicate the Title 10 has its own provisions for electronic transactions such as check collections and electronic funds transfers;
- Does NOT apply to “a law governing adoption, divorce, or other matters of family law, with the exception of a temporary restraining order”;
- Various exclusions for cancellation or termination of utility services, evictions, rental agreements, cancellation or termination of health insurance and life insurance benefits, certain product recalls
- Documents relating to the transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

LOUISIANA UNIFORM ELECTRONICTRANSACTIONS ACT (UETA)

§ 2602 Definitions – “Electronic signature” – “no specific technology need be used to create a valid signature”;

- “one’s voice on an answering machine may suffice if the requisite intention is present”;
- “including one’s name as part of an electronic mail communication also may suffice, as may the firm name on the facsimile”

Preston Law Firm, L.L.C. v. Mariner Health Care Mgmt. Co., 622 F.3d 384 (5th Cir. 2010)

- Dispute over approximately \$2 million in legal fees; issue was whether emails sufficed for writing and signature requirements for binding settlement agreement on the payment of fees;
- Fifth Circuit held that a valid compromise was formed through email communications for settlement of the claim for legal fees; law firm sued under the open account statute and it was removed to federal court;
- “Where a writing and/or a signature is required to form a contract, an email will satisfy such requirement. See La.Rev.Stat. Ann. § 9:2607.” *Preston Law Firm*, 622 F.3d at 390.

LOUISIANA UNIFORM ELECTRONICTRANSACTIONS ACT (UETA)

Klebanoff v. Haberle, 43,102 (La.App. 2 Cir. 3/19/08); 978 So.2d 598

- “In the instant case, the parties' positions were clearly expressed in writings which are recognized under the La. Uniform Electronic Transactions Act, La. R.S. 9:2607.” *Klebanoff*, 978 So.2d at 605.
- Early case holding that e-mail communications qualify as “writings” sufficient for settlement purposes under UETA.

Williamson v. Bank of New York Mellon, 947 F.Supp.2d 704 (N.D. Tex.2013)

- Question of whether the parties entered into a settlement agreement with a series of emails between counsel
- Under Texas UETA, the series of emails qualified as a signed writing
- The court discussed the distinction between typing your name at the end of an email and automatically including a signature block
- The court wrote that an attorney’s manually typed name qualified as an electronic signature under the UETA
- **Automatic signature blocks** – “McInnis's email client did not create a signature block of its own volition. Rather, McInnis must have generated his signature block at some point in the past. He then directed his email client to attach the signature block to his subsequent outgoing email. The Court concludes that these actions affirmatively show intent to sign the record as required by TUETA.” *Williamson*, 947 F.Supp.2d at 710-711.
- Compares to signature on a telegram

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

“A number of other courts have similarly found that names typed at the end of emails can be signatures under various states’ statutes of frauds and enactments of the Uniform Electronic Transactions Act (‘UETA’), which is the source of TUETA. E.g., *Preston Law Firm, L.L.C. v. Mariner Health Care Mgmt. Co.*, 622 F.3d 384, 391 (5th Cir.2010) (affirming that ‘[e]mails can qualify as the signed writings needed to form contracts’ under Louisiana’s UETA); *Lamle v. Mattel, Inc.*, 394 F.3d 1355, 1362 (Fed.Cir.2005) (opining that inclusion of individual’s name on email would be valid signature under California’s UETA); *Cloud Corp. v. Hasbro, Inc.*, 314 F.3d 289, 295–96 (7th Cir.2002) (holding that ‘the sender’s name on an e-mail satisfies the signature requirement of the [Illinois] statute of frauds’ and noting that it would be valid signature under federal Electronic Signatures in Global and National Commerce Act as well); *Adani Exps. Ltd. v. AMCI Exp. Corp.*, Civ. A. No. 05–304, 2007 WL 4298525, at *11 (W.D.Pa. Dec. 4, 2007) (finding email sufficient to meet requirements of Pennsylvania statute of frauds); *Roger Edwards, LLC v. Fiddes & Son, Ltd.*, 245 F.Supp.2d 251, 261 (D.Me.2003), *aff’d in part, dismissed in part*, 387 F.3d 90 (1st Cir.2004) (same for Maine statute of frauds); *Waddle v. Elrod*, 367 S.W.3d 217, 228–29 (Tenn.2012) (same for Tennessee); *Williason v. Delsener*, 59 A.D.3d 291, 874 N.Y.S.2d 41 (N.Y.App.Div.2009) (same for New York); see also *Tricon Energy, Ltd. v. Vinmar Int’l, Ltd.*, No. 4:10–CV–05260, 2011 WL 4424802, at *11 (S.D.Tex. Sept. 21, 2011) (holding, without reference to TUETA, that two emails closing with typed names ‘represent signed writings under the Texas UCC’).”

***Williamson v. Bank of New York Mellon*, 947 F.Supp.2d 704, 710 (N.D. Tex.2013)**

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2608 Provision of information in writing; presentation of records

- If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record **capable of retention by the recipient at the time of receipt.**
- Also addressed how to handle electronic information if other laws require that the information be “posted or displayed in a certain manner”
- “Savings provision” – other substantive laws not overridden

§ 2609 – **Attribution and effect of electronic record and electronic signature**

- “An electronic record or electronic signature is attributable to a person **if it was the act of the person.**”
- Created a considerable amount of litigation – parties arguing that they did not sign electronically.
- “The act of the person may be shown in any manner, including a showing of the **efficacy of any security procedure** applied to determine the person to which the electronic record or electronic signature was attributable.”
- The effect of an electronic record or electronic signature attributed to a person is determined from the **context and surrounding circumstances at the time of its creation, execution, or adoption,** including the agreement of the parties, if any, and otherwise as provided by law.

LOUISIANA UNIFORM ELECTRONICTRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Arbitration Agreements

Hill v. Hornbeck Offshore Servs., Inc., 799 F.Supp.2d 658 (E.D. La.2011)

- Incentive program where employee “electronically reviewed and signed” agreements that contained arbitration clauses
- Employee disputed whether the “clickwrap” agreement created a legally enforceable obligation to arbitrate.
- “Moreover, state law also gives legal effect to both electronic contracts and signatures. See La.Rev.Stat. § 9:2607. Therefore, in the absence of fraud, misrepresentation, or deceit, one is bound under Louisiana law to the terms of a contract, signed electronically or otherwise.” Hill, 799 F.Supp.2d at 661.

LOUISIANA UNIFORM ELECTRONICTRANSACTIIONS ACT (UETA)

ATTRIBUTION CASES

Uninsured Motorist Waivers

Bonck v. White, 2012-1522 (La.App. 4 Cir. 4/24/13, 6); 115 So.3d 651

- “No case exists in Louisiana that applies this statute [UETA] to a UMBI [uninsured/underinsured motorist bodily injury coverage] form.”
- Fourth Circuit held that statute does apply to insurance forms, including UMBI, based in part on an advisory letter from the acting Commissioner of Insurance that said electronic signatures are authorized in transacting the business of insurance in Louisiana.
- Plaintiff met the agent in Progressive's office and signed the application online in the office; when the dispute arose, Progressive produced a waiver form that was initialed and signed electronically by Plaintiff;
- Plaintiff denied she signed the waiver form, and argued that electronic signatures cannot be used in insurance policies; she also pointed out that her name was spelled with a “Y” rather than an “I”;
- The trial court granted the insurer’s MSJ, but the Fourth Circuit reversed, finding that genuine issues of material fact existed concerning whether Plaintiff actually signed the form electronically. An affidavit of Plaintiff showed that the form was completed four days after her actual visit to the office, and that all of her communications with the insurance company were in person four days earlier. Progressive’s affidavit only stated what was contained in the insurance company’s files.

LOUISIANA UNIFORM ELECTRONICTRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Uninsured Motorist Waivers

Jackson v. Liberty Pers. Ins. Co., 20-13, p. 13 (La.App. 5 Cir. 7/2/20); 299 So.3d 1256, 1268, writ denied, 2020-00967 (La. 11/4/20); 303 So.3d 641

- “The Uniform Electronic Signature Law, La. R.S. 9:2602, et seq., applies to automobile insurance policies and required UM forms.” Citing *Bonck v. White*, 12-1522 (La. App. 4 Cir. 4/24/13), 115 So.3d 651, 655.
- “Furthermore, the fact that Ms. Jackson approved the selection of Economic-Only UMBI coverage by e-signature instead of e-initials does not invalidate her consent. Compare *Reno v. Travelers Home & Marine Ins. Co.*, 02-2637 (La. App. 1 Cir. 11/7/03), 867 So.2d 751, 754, wherein the court said that ‘It is merely a question of identity and a representation of a person's willingness to be bound.’”
- Liberty relied on the affidavit of an employee whose title was “e-signature Product Owner” – outlined the process for applying on-line and using e-signatures. (Affidavit included in the materials)

LOUISIANA UNIFORM ELECTRONICTRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Uninsured Motorist Waivers

Rapalo-Alfaro v. Lee, 2015-0209 (La.App. 4 Cir. 8/12/15); 173 So.3d 1174

- “Mr. Rapalo–Alfaro also asserted that Lloyd's motion should be denied because it failed to establish that the name, date, initials, and signature on the uninsured motorist rejection form—all of which were completed electronically—are attributable to him.
- Named Lloyds as a defendant and claimed he had UM coverage.
- Lloyd's filed MSJ supported by certified copy of the UM waiver electronically signed by plaintiff.
- Lloyds proved the signature by attaching a “digital signature acceptance confirmation” with plaintiff's electronic signature, a digital ID number associated with the signature, a box with his initials, and language confirming his electronic signature.
- Good background discussion on the burden of proof under UETA to prove electronic signatures.
- District Court granted MSJ for insurer, Fourth Circuit affirmed.

LOUISIANA UNIFORM ELECTRONICTRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Uninsured Motorist Waivers

Weddborn v. Doe, 2015-1088 (La.App. 4 Cir. 5/4/16); 194 So.3d 80

- “While an electronic signature may be considered valid, the production of a UM rejection form, alone, is insufficient to establish that an insurer has borne its burden of proof on a motion for summary judgment, when there is a sworn statement by an insured denying that she executed the form. Such a statement creates, at the least, a credibility issue for which summary judgment is inappropriate.” *Weddborn*, 194 So.3d at 88.
- Practice tip: These cases tend to turn on the affidavit of the insurance company. In the cases where the insurance company has been successful, they have provided an affidavit of the actual agent who participated in the application process, or an affidavit on the technical details of how they prove attribution; the insured has been successful where the insurer only provides an affidavit of an employee who reviewed the policy after the fact and merely stated what was in the insurance files.
- Affidavit of plaintiff was not simple denial, but stated specific facts such as they had completed and signed all forms by hand, met with the agents in person, and had not completed anything online.
- District Court granted insurer’s MSJ; Fourth Circuit reversed.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Umbrella Insurer's MSJ

Whitehead v. Curole, 2018-1178 (La.App. 1 Cir. 5/9/19); 277 So.3d 409

- Plaintiff argued on summary judgment that the certified copy of the underwriting file was not admissible because it was signed electronically by the insurance company representative.
- First Circuit rejected the argument and said that the electronically signed letter was admissible under the UETA to certify the underwriting file and it was competent summary judgment evidence.
- “Thus, Ms. Horton’s [the insurance company representative] electronically signed letter is admissible under the current version of LSA-R.S. 9:2603 to certify the underwriting file.” *Whitehead*, 277 So.3d at 413.

LOUISIANA UNIFORM ELECTRONICTRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Zulkiewski v. Am. Gen. Life Ins. Co., 299025, 2012 WL 2126068 (Mich. Ct. App. June 12, 2012)

- Dispute over life insurance proceeds; initially, first wife was named as beneficiary and parents were contingent beneficiaries; later changed to have parents as primary beneficiaries; then someone logged in, created an online account, and changed the beneficiary to the second wife as primary and parents as contingent beneficiaries.
- Insured dies; fight ensues between the new wife and the parents over the insurance proceeds.
- Interpleader filed against the parents after insurance company was sued by the second wife.
- Issue became the security procedures used to determine that the decedent had actually made the changes to the policy and the “efficacy of any security procedures” to respond to challenges to authenticity; not required, but one way to show attribution to the individual; American General submitted evidence of its safeguards, including personal information and policy information required to register and make changes online, and regular email and mail notifications confirming changes.
- The court ruled that American General submitted adequate information to show that they had proper safeguards in place, and that the parents could not establish that the changes were the result of fraud or that the changes were made by someone other than the decedent.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Authentic Acts

- “An authentic act constitutes full proof of the agreement it contains, as against the parties, their heirs, and successors by universal or particular title.” Louisiana Civil Code art. 1835 (Authentic act constitutes full proof between parties and heirs)
- “A donation *inter vivos* shall be made by authentic act under the penalty of absolute nullity, unless otherwise expressly permitted by law.” Louisiana Civil Code art. 1541 (Form required for donations)
- “Executory proceedings are those which are used to effect the seizure and sale of property, without previous citation and judgment, to enforce a mortgage or privilege thereon evidenced by an authentic act importing a confession of judgment, and in other cases allowed by law.” Louisiana Code of Civil Procedure art. 2631 (Use of executory proceedings)
- Notarial testaments (Louisiana Civil Code Article 1576)

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Eschete v. Eschete, 2012-2059 (La.App. 1 Cir. 2/27/14, 4-5); 142 So.3d 985 (Donation invalidated because of physical separation of notary and witness from person signing document)

“While the trial court appears to have accepted the testimony of Ms. Robichaux and Ms. Smith as credible and that they were, in fact, in an adjoining office with the door open with Ms. Robichaux on the phone and Ms. Smith making copies, the trial court found that ‘the writing was not executed before Ms. Robichaux and that ... Mr. Eschete was not in the presence of Ms. Smith at the signing of the document.’ Under these specific facts, we cannot conclude that the trial court erred in finding that the act did not meet the requirements of an authentic act as contemplated by LSA–C.C. art. 1833.1. Clearly, the physical separation prevented the notary and one of the witnesses from observing Mr. Eschete affix his signature onto the act of donation.”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

E-filing and Video Conferencing in Louisiana (Court status updates at www.lasc.org)

Jefferson Parish Clerk of Court – JeffNet; JeffAlerts (<https://www.courtonline.us/> - video conferencing for all 24th JDC (Jefferson) judges) – Reduced rate for 24 hour access (\$5) – IMPORTANT - E-filing and e-recording services are not available with 24-hour access accounts.

24th JDC and Orleans CDC remote check-in system – **SINE APP** - lawyers, litigants, defendants, witnesses, and visitors who have been permitted to attend in person may remain in their vehicles or outside of the courthouse until their case is called. **DOWNLOAD THE SINE APP BEFORE COURT** and use it to check in when you arrive to the courthouse; CDC in jury pool rooms.

Louisiana First and Fifth Circuit Court of Appeal – Zoom oral arguments

Orleans Parish – Remote Access System <http://www.oreanscivilclerk.com/onlinerecords.html> (March 27, 2020 – Clerk Chelsey Richard Napoleon announces FREE complimentary subscriptions to the Remote Access system including civil records and land records.)

Ascension, Calcasieu, Iberia, Jefferson Davis, Lafayette, Livingston, Plaquemines, Sabine, St. John the Baptist, St. Tammany, Tangipahoa, and Union Parishes - Odyssey E-File LA system <https://louisiana.tylerhost.net/OfsWeb/>

East Baton Rouge and Bossier - <https://clerkconnect.com/login>

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2603.1 – Electronic applications for warrants and judicial records

- Section F allows person to sign an affidavit with an electronic signature

Op. Att'y Gen. No. 14-0187 (Jan. 9, 2015)

“Act 606 of the 2014 Regular Session authorizes judges to use electronic signatures when signing court orders, notices, official court documents, and other writings to be executed in connection with both civil and criminal proceedings, subject to the adoption of court rules establishing the method and ensuring the authenticity of such signatures. Accordingly, La. Atty. Gen. Op. No. 13-0158 is recalled.”

Hon. Scott U. Schlegel, Judge, Division “D”

24th Judicial District Court, Jefferson Parish

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2604 – Application – only applies to electronic records and signatures created after July 1, 2001;

- States specifically that it is adopting the UETA and addresses inconsistencies with the E-Sign

§ 2605 – Use of electronic records and electronic signatures

- applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means
- Indicates that while some transactions may be made by electronic means, party may refuse to conduct other transactions by electronic means
- Gives examples of where it may be found the parties reached an agreement to conduct electronic transactions, even includes giving out a business card with an email address – May have implied that you are consenting to conduct business electronically

§ 2606 – Construction and Application – “to facilitate electronic transactions consistent with other applicable law” and eliminate barriers to electronic commerce and governmental transactions

- Statute is designed to “allow the courts to apply [the provisions] to new and unforeseen technologies and practices”;
- “As time progresses, it is anticipated that what is new and unforeseen today will be commonplace tomorrow”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2610 Effect of change or error

- Addresses errors in person-to-person and person-to-automated system transactions
- Requires prompt notification and reasonable steps to notify other party of error

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2612 Retention of electronic records; originals

- If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which: (1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and, (2) Remains accessible for later reference.
 - Comments – “issue of technology obsolescence and the need to update and migrate information to developing systems”

§ 2613 Admissibility in evidence

- “In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.”

§ 2614 Automated transaction

- A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the actions of the electronic agents or the resulting terms and agreements.
- Comments – “This Section confirms that contracts can be formed by machines functioning as electronic agents for parties to a transaction.”
- Discusses validity of “I AGREE” buttons on internet transactions

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2615 Time and place of sending and receipt

- “Default rules” on determining when an electronic record is sent or received

§ 2616 Transferable records

- A “transferable record” means an electronic record that “would be a note as defined in R.S. 10:3-101 et seq. [UCC – Negotiable Instruments], or a document under R.S. 10:7-101 et seq. [UCC – Documents of Title], if the electronic record were in writing.”

§ 2617, 2618, and 2619 – Defers to state agencies to determine when, or if, they will convert to electronic records and transactions and grants authority to agencies to set standards.

§ 2620 – Provisions are severable

§ 2621 Certification of electronic records

- Online applications for state licenses or permits
- Allows governmental agency to accept an online certification from the applicant in lieu of the sworn application

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Stringer v. Pablos, SA-16-CV-257-OG, 2020 WL 532937, (W.D. Tex. Jan. 30, 2020)

- “Defendants [Texas Secretary of State and Department of Public Safety] violated the National Voter Registration Act, 52 U.S.C. §§ 20503(a)(1), 20504(a), (c), (d), and (e), and 20507(a)(1)(A), and the Equal Protection Clause, U.S. Const. amend. XIV, § 1, by failing to permit simultaneous voter registration with online driver's license renewal and change-of-address transactions.”
- Court ordered Texas SOS and DPS “to establish procedures that treat each online driver's license renewal or change-of-address application as a simultaneous application for voter registration which must then be submitted to the Secretary of State.”
- “It is undisputed that the State of Texas already has preexisting electronically stored signatures for every person that uses the online service, and could use them for both driver's license and voter registration. Defendants already use electronically stored signatures for every in-person and mail driver's license-voter registration transaction, which makes their refusal to accept them in online transactions unexplainable.” *Stringer*, 2020 WL 532937 at *6.



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November 11, 2021

ACT No. 131

2020 Regular Session

HOUSE BILL NO. 122

BY REPRESENTATIVE GREGORY MILLER

1 AN ACT

2 To enact Chapter 11 of Title 35 of the Louisiana Statutes of 1950, to be comprised of R.S.
3 35:701 and 702, relative to the effect of remote notarization during certain
4 emergencies and disasters; to provide for notary services during the COVID-19
5 public health emergency; to provide relative to the ratification of Section 6 of
6 Proclamation Number 37 JBE 2020 and Part C of Section 5 of Proclamation Number
7 41 JBE 2020; to provide for retroactive and prospective application; to provide for
8 effectiveness, and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 11 of Title 35 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 35:701 and 702, is hereby enacted to read as follows:

12 CHAPTER 11. MODIFICATION OF PRESENCE REQUIREMENT FOR NOTARY

13 FUNCTIONS PERFORMED DURING 2020 COVID-19 PUBLIC HEALTH

14 EMERGENCY

15 §701. Purpose; ratification

16 A. The legislature finds that the COVID-19 public health emergency created
17 a statewide emergency disrupting the ability of notaries public to be in the physical
18 presence of persons whose signatures the notary public was authenticating. This
19 Chapter is enacted for the benefit and protection of the state as a whole and its
20 citizens, to prevent injustice, inequity, undue hardship, and disruption of transactions
21 to persons relying on the authentication of signatures of persons not in the physical
22 presence of a notary public by a notary public who authenticated the signature

1 through electronic means using audio-video communication. Therefore, this Chapter
2 shall be liberally construed to effect its purposes.

3 B. The action of the governor of this state in issuing Section 6 of
4 Proclamation Number 37 JBE 2020 and Part C of Section 5 of Proclamation Number
5 41 JBE 2020 is hereby approved, ratified, and confirmed subject to the provisions
6 of this Part.

7 §702. Remote notarization authorized

8 A. Notwithstanding any law to the contrary, any act in which any person or
9 witness appeared before a notary public using an electronic device or process which
10 allowed all such persons and the notary public to communicate simultaneously by
11 sight and sound and to which the electronic signatures of such persons, witnesses,
12 and the notary public were affixed on or after March 11, 2020, and before May 1,
13 2020, shall have the same force and effect as if all persons, witnesses, and the notary
14 public had been in the physical presence of each other.

15 B. The provisions of Subsection A of this Section shall not apply to any
16 testament, trust instrument, donation inter vivos, matrimonial agreement, act
17 modifying, waiving, or extinguishing an obligation of final spousal support, or any
18 amendments to such acts, or authentic acts.

19 C. Any act which would constitute an authentic act but for the appearance
20 of one or more necessary persons via electronic means, may still be valid as an act
21 under private signature or an acknowledged act.

22 Section 2. The provisions of this Act shall preempt and supersede but not repeal any
23 conflicting provision of the Civil Code or any other provision of law to the extent that such
24 provision conflicts with the provisions of this Act.

25 Section 3. This Act is declared to be interpretative, curative, and procedural, and
26 therefore is to be applied retroactively as well as prospectively.

27 Section 4. The Louisiana State Law Institute is hereby directed to include as notes
28 to this Act Proclamation Number 37 JBE 2020 and Proclamation Number 41 JBE 2020.

29 Section 5. This Act shall become effective upon signature by the governor or, if not
30 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
3 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 254

2020 Regular Session

HOUSE BILL NO. 274

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Article 3344(A)(introductory paragraph) and R.S. 35:6
3 and to enact R.S. 9:2760 and Chapter 10 of Title 35 of the Louisiana Revised
4 Statutes of 1950, to be comprised of R.S. 35:621 through 630, relative to remote
5 online notarization; to provide for recordation of tangible copies of electronic acts;
6 to provide for performance of remote online notarization; to provide for limitations
7 relative to remote online notarization; to provide for definitions; to provide for
8 rulemaking; to provide for duties of notaries public; to provide for recordkeeping;
9 to provide for an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Civil Code Article 3344(A)(introductory paragraph) is hereby amended
12 and reenacted to read as follows:

13 Art. 3344. Refusal for failure of original signature or proper certification; effect of
14 recordation; necessity of proof of signature recordation of a duplicate

15 A. ~~The~~ Except as otherwise provided by law, the recorder shall refuse to
16 record:

17 * * *

18 Section 2. R.S. 9:2760 is hereby enacted to read as follows:

19 §2760. Recordation of electronic record in tangible form

20 The recorder shall not refuse to record a tangible copy of an electronic record
21 on the ground that it does not bear the original signature of a party if a notary public
22 or other officer before whom it was executed certifies that the tangible copy is an
23 accurate copy of the electronic record.

1 Section 3. R.S. 35:6 is hereby amended and reenacted to read as follows:

2 §6. Foreign notaries; acts and other instruments, effect

3 All acts passed before any notary public and two witnesses in the District of
 4 Columbia, or any state of the United States other than Louisiana, except those
 5 performed by remote online notarization, shall be authentic acts and shall have the
 6 same force and effect as if passed before a notary public in Louisiana.

7 Section 4. Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be
 8 comprised of R.S. 35:621 through 624 and 626 through 630, is hereby enacted to read as
 9 follows:

10 CHAPTER 10. REMOTE ONLINE NOTARIZATION

11 §621. Short title

12 This Chapter may be cited as the "Remote Online Notarization Act".

13 §622. Definitions

14 A. In this Chapter:

15 (1) "Communication technology" means an electronic device or process that
 16 allows substantially simultaneous communication by sight and sound.

17 (2) "Credential analysis" means a process through which the authenticity of
 18 an individual's government-issued identification credential is evaluated by another
 19 person through review of public and proprietary data sources.

20 (3) "Identity proofing" means a process through which the identity of an
 21 individual is affirmed by another person by either of the following means:

22 (a) Dynamic knowledge-based authentication, such as a review of personal
 23 information from public or proprietary data sources.

24 (b) Analysis of biometric data, such as facial recognition, voiceprint analysis,
 25 or fingerprint analysis.

26 (4) "Remote online notarial act" means an instrument executed before a
 27 notary public by means of communication technology that meets the standards
 28 adopted under this Chapter.

1 (5) "Remote online notarization" means the process through which an
 2 instrument is executed before a notary public by means of communication
 3 technology that meets the standards adopted under this Chapter.

4 B. The definitions of "electronic", "electronic record", "electronic signature",
 5 and "record" as provided by the Louisiana Uniform Electronic Transactions Act, R.S.
 6 9:2601 et seq., apply in this Chapter.

7 §623. Legal recognition of remote online notarial acts

8 A. Except as otherwise provided in Subsections B and C of this Section, a
 9 remote online notarial act that meets the requirements of R.S. 35:625 through 627
 10 satisfies any requirement that a party appear before a notary public at the time of the
 11 execution of the instrument. In all other respects, a remote online notarial act shall
 12 comply with other applicable laws governing the manner of the execution of that act.

13 B. The following instruments shall not be executed by remote online
 14 notarization:

15 (1) Testaments or codicils thereto.

16 (2) Trust instruments or acknowledgments thereof.

17 (3) Donations inter vivos.

18 (4) Matrimonial agreements or acknowledgments thereof.

19 (5) Acts modifying, waiving, or extinguishing an obligation of final spousal
 20 support or acknowledgments thereof.

21 C. Remote online notarization may not be used to execute an authentic act
 22 as defined in Civil Code Article 1833. Except as otherwise provided in Subsection
 23 B of this Section, an act that fails to be authentic as a result of being executed by
 24 remote online notarization may still be valid as an act under private signature or an
 25 acknowledged act.

26 D. This Chapter supplements and does not repeal, supersede, or limit the
 27 provisions of the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.

1 §624. Standards for remote online notarization

2 A. The secretary of state shall, by rule adopted in accordance with the
3 Administrative Procedure Act, develop and maintain standards for the
4 implementation of this Chapter.

5 B. In developing standards for remote online notarization, the secretary of
6 state shall form a stakeholder committee that shall include but need not be limited
7 to representatives of the Louisiana Land Title Association, the Louisiana Association
8 of Independent Land Title Agents, the Louisiana Notary Association, the Louisiana
9 Bankers Association, the Louisiana Clerks of Court Association, the Louisiana State
10 Bar Association, the Louisiana Public Tag Association, and the Louisiana State Law
11 Institute.

12 C. The rules shall be adopted prior to February 1, 2022, and may thereafter
13 be modified, amended, or supplemented with or without the input of the stakeholder
14 committee.

15 * * *

16 §626. Location of notary, parties, and witnesses; location of remote online notarial
17 act

18 A. A notary public physically located in any parish of this state in which the
19 notary has the power to exercise the function of a notary public may perform a
20 remote online notarization for a party who is not in the physical presence of the
21 notary and who may be located in or outside this state. A witness to a remote online
22 notarial act shall be in the physical presence of the party.

23 B. A remote online notarial act is deemed to be executed in any parish of this
24 state where any party is physically located at the time of the remote online
25 notarization. If no party was physically located in this state at the time of the remote
26 online notarization, the remote online notarial act is deemed to be executed in the
27 parish where the notary public is physically located at the time of the remote online
28 notarization.

1 §627. Procedure for performing remote online notarization

2 A. At the time of a remote online notarization, the notary public shall verify
3 the identity of any party or witness appearing remotely, both through use of
4 communication technology and by one of the following means:

5 (1) The notary public's personal knowledge of the individual.

6 (2) A process that includes all of the following:

7 (a) Remote presentation by the individual of a government-issued
8 identification credential, such as a passport or driver's license, that contains the
9 signature and a photograph of the individual.

10 (b) Credential analysis.

11 (c) Identity proofing.

12 B. The notary public shall do all of the following:

13 (1) Include in the remote online notarial act a statement that it is a remote
14 online notarial act.

15 (2) Attach to or cause to be logically associated with the remote online
16 notarial act the notary public's electronic signature, together with all other
17 information required to be included in the act by other applicable law.

18 (3) Digitally sign the remote online notarial act in a manner that renders any
19 subsequent change or modification of the remote online notarial act to be evident.

20 §628. Duties of the notary

21 The notary public shall take reasonable steps to ensure both of the following:

22 (1) The communication technology used in the performance of a remote
23 online notarization is secure from unauthorized interception.

24 (2) The electronic record before the notary public is the same electronic
25 record in which the party made a statement or on which the party executed or
26 adopted an electronic signature.

27 §629. Records of remote online notarizations

28 A. The notary public shall do all of the following:

1 (1) Maintain electronic copies capable of being printed in a tangible medium
2 of all remote online notarial acts for at least ten years after the date of the remote
3 online notarization.

4 (2) Maintain an audio and video recording of each remote online notarization
5 for at least ten years after the date of the remote online notarization.

6 (3) Take reasonable steps to secure the records required to be maintained by
7 this Section from corruption, loss, destruction, and unauthorized interception or
8 alteration.

9 B. The notary public may designate a custodian to maintain the electronic
10 records required by Subsection A of this Section, provided that the notary public has
11 unrestricted access to the electronic records and the custodian meets any standards
12 established by the secretary of state for the maintenance of electronic records.

13 §630. No variation by agreement

14 The provisions of this Chapter may not be varied by agreement.

15 Section 5. R.S. 35:625 is hereby enacted to read as follows:

16 §625. Notaries authorized to perform remote online notarization

17 A. Any regularly commissioned notary public who holds a valid notarial
18 commission in the state of Louisiana is hereby authorized to perform remote online
19 notarizations.

20 B. The provisions of this Section shall cease to be effective on February 1,
21 2022.

22 Section 6. R.S. 35:625.1 is hereby enacted to read as follows:

23 §625.1. Notaries authorized to perform remote online notarization

24 A. Only a regularly commissioned notary public who holds a valid notarial
25 commission in the state of Louisiana may be authorized by the secretary of state to
26 perform remote online notarization.

27 B. In order to obtain authorization to perform remote online notarization, a
28 notary public shall submit an application to the secretary of state in a format
29 prescribed by the secretary of state, complete any course of instruction required by

1 the secretary of state, and satisfy any other requirements imposed by rules adopted
2 by the secretary of state.

3 C. The authority to perform remote online notarization shall continue as long
4 as the notary public is validly commissioned and the secretary of state has not
5 revoked the notary public's authority to perform remote online notarization.

6 Section 7. This Section and Sections 1, 2, 3, 8, 9, and 10 of this Act shall become
7 effective on August 1, 2020.

8 Section 8.(A) Section 4 of this Act shall become effective upon the later of
9 enactment of the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress)
10 or August 1, 2020.

11 (B) If the SECURE Notarization Act is not enacted prior to February 1, 2022,
12 Section 4 of the Act shall become effective on February 1, 2022.

13 Section 9.(A) Section 5 of this Act is contingent upon the enactment of the SECURE
14 Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress).

15 (B) If the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress)
16 is enacted, Section 5 of this Act shall become effective upon the later of the enactment of
17 the H.R. 6364 or S. 3533 of the 116th Congress or August 1, 2020.

18 Section 10. Section 6 of this Act shall become effective on February 1, 2022.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____